IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9323 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

R R AUTO ENGINEERING WORKS

Versus

CHIEF DIVISIONAL MANAGER

Appearance:

MR NM KAPADIA for Petitioner

M/S PATEL ADVOCATES for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 31/07/2000

ORAL JUDGEMENT

Rule.

1. The petitioner claims to be a a firm which owns a large number of motor vehicles/machineries on ownership

basis as well as contract basis. By letter dated 11.9.95(at annexure "A" to the petition) the respondent company(a Govt.of India undertaking) granted consumer pump at the petitioner's site at Vanz, Taluka Choryasi, District Surat subject to certain terms and conditions. The main condition was that the supply of HSD/Lubricating Oils/Greases would be made by the petitioner only to the vehicles/machineries belonging to the petitioner or vehicles/machineries on contract with the petitioner.

2. On an allegation that the petitioner committed breach of above condition the respondent Company stopped supply of HSD/Lubricating Oils/Greases to the petitioner firm. It is against the said decision that the present petition is filed.

3. Various contentions are raised by Mr.Kapadia in support of his claim that the petitioner has not committed any breach of aforesaid condition. He further submits that in similar cases where consumer pumps were allotted to agricultural cooperative societies similar allegations were made and on that ground supply was stopped to those societies and those Agricultural Cooperative Societies therefore filed Special Civil Applications which came to be dismissed and against those orders Letters Patent Appeals were preferred and in those appeals interim orders have been passed. Reliance is placed by the petitioner on the order, dated 16.7.1999 in Misc.Civil Application No.1035/99 in Letters Patent Appeal No.444/99 with Misc.Civil Application No.1301 to 1330/99. Learned counsel for the petitioner, therefore, submits that similar orders may be passed in the present petition also.

4. Learned counsel for the respondent-company, however, opposes the petition and submits that the petitioner was found to have committed breach of an important condition subject to which the consumer pump was granted to the petitioner and the petitioner was not entitled to any relief. The order passed in the Miscellaneous Civil Application in the LPAs is sought to be distinguished on the ground that it is a case pertaining to Agricultural Cooperative Societies whereas the petitioner is running an industry and therefore the petitioner's case does not stand on the same footing.

5. Having heard the learned counsel for the parties and having perused the affidavit-in-reply as well as the orders passed in the Miscellaneous Civil Applications in the LPAs this court is of the view that the petitioner's

case appears to be similar to that of Agricultural Cooperative Societies which were opponents in the above Miscellaneous Civil Applications. Looking to the nature of the petitioner's industry, the petitioner requires HSD/Grease for petitioner's own vehicles as well as vehicles/machineries which are with the petitioner on contract basis and such relevant figures are given on page No.24 of the paper book. By letter dated 11.9.99 the petitioner informed the respondent-company that it had a number of diesel sets and vehicles for which HSD was required for running them and also for overhauling purposes. 3,000 Ltrs of HSD was required for Diesel sets, whereas 40,000 Ltrs of HSD was required for 53 vehicles registration numbers of which are given on page No.26 of the paper book. Another 10,000 Ltrs of HSD was required for Engine overhauling at the workshop being run by the petitioner. Looking to the aforesaid figures it is established that the petitioner requires large quantity of HSD for its own vehicles/machineries as well as vehicles/machineries on contract with the petitioner. Hence, it can not be said that the petitioner stands on a different footing from the opponents in the Miscellaneous Civil Application in the Letters Patent Appeals.

6. In view of the above discussion, the following order is passed:

The supply of Petroleum products to the petitioner shall be resumed within a period of two weeks from the date of receipt of writ of this Court or a certified copy of this order, whichever is earlier subject to the following conditions:

(i) The owner of the consumer pump shall execute the consumer pump agreement as per the standard format. In case it is not done within one month from today, the petitioner will not be entitled to supply of petroleum products from the separate company and the respondent company will not supply petroleum products to the consumer pumps.

(ii) The owner of the consumer pump shall give an undertaking to this Court to the following effect:

(a) The petitioner will supply HSD/Diesel only for the purpose of its own vehicles/machineries or vehicles/machineries on contract with the petitioner.

(b) The petitioner shall, if required by the respondent-company, change the layout format/get up of

the consumer pump so as to distinguish it from a retail outlet.

(c) The petitioner shall not supply HSD/Diesel to any other person in the market.

(d) In the event of breach of any of the conditions, the petitioner shall not be entitled to get supply of petroleum products.

(iii) The petitioner shall file undertaking in the aforesaid terms before this court within three weeks from today.

6. Rule is made absolute in the aforesaid terms. There shall be no order as t costs.

Liberty to apply in case of difficulty

31.7.2000 (M.S.SHAH,J)